

REMARKS

Claims 35-51 were pending in the application. Claim 50 has been canceled. Upon entry of these amendments, Claims 35-49, and 51 will be pending and under active consideration. Claim 35 is independent.

Applicants submit respectfully that the amendments presented herein are supported fully by the claims and/or specification as originally filed and, thus, do not represent new subject matter.

Claim 50 has been canceled without prejudice to pursuing this claim in one or more continuing applications.

Applicants respectfully request entry of the amendments and remarks made herein into the file history of the present invention. Reconsideration and withdrawal of the rejections set forth in the above-identified Office Action are respectfully requested.

I. The Double Patenting Rejections

At paragraphs 4 and 5, the Office Action rejects Claims 35-51 as allegedly falling within the judicially created doctrine of obviousness-type double patenting. Applicants traverse respectfully.

With respect to Claim 50, without acquiescing in the propriety of rejection, and solely to advance prosecution of the present application, Claim 50 has been canceled without prejudice to pursuing this claim in one or more continuing applications. Accordingly, Applicants respectfully submit that the rejection of Claim 50 as allegedly within the judicially created doctrine of obviousness-type double patenting is now moot and withdrawal thereof is respectfully requested.

With respect to Claims 35-49, and 51, without acquiescing in the propriety of the rejection, Applicants are filing herewith Terminal Disclaimers for each of U.S. Patent Nos. 6,069,005 and 2,242,252. Applicants note respectfully that "[T]he filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection." M.P.E.P. §804.02(II).

In view of the Terminal Disclaimers concurrently submitted herewith for each of U.S. Patent Nos. 6,069,005 and 2,242,252, Applicants respectfully submit that the obviousness-type double patenting rejections have been overcome and withdrawal thereof is respectfully requested.

II. Rejections Under 35 U.S.C. § 112, First Paragraph

At paragraph 8 of the Office Action, Claim 50 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention, for the reasons of record. The reasons of record, in sum, allege that monoclonal antibody 374.3 must be readily accessible to the public in order to practice the invention as claimed. Applicants respectfully traverse.

Without acquiescing in the propriety of rejection, and solely to advance prosecution of the present application, Claim 50 has been canceled without prejudice to pursuing this claim in one or more continuing applications. Accordingly, Applicants respectfully submit that the 35 U.S.C. § 112, first paragraph, rejection of Claim 50 based on antibody 374.3 has been overcome and withdrawal thereof is respectfully requested.

III. Rejections Under 35 U.S.C. § 112, Second Paragraph

At paragraph 10 of the Office Action, for the reasons of record delineated in the Office Action at paragraph 10, Claim 50 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to point out particularly and claim distinctly the subject matter regarded as the invention. Applicants respectfully traverse.

Without acquiescing in the propriety of rejection, and solely to advance prosecution of the present application, Claim 50 has been canceled without prejudice to pursuing this claim in one or more continuing applications. Accordingly, Applicants respectfully submit that the 35 U.S.C. § 112, second paragraph, rejection of Claim 50 based on antibody 374.3 has been overcome and withdrawal thereof is respectfully requested.

On this basis, Applicants suggest respectfully that the rejections have been obviated or overcome, and Applicants request respectfully that the 35 U.S.C. § 112, second paragraph, rejection of Claims 39-45 and 49-51 be withdrawn.

CONCLUSION


Applicants submit respectfully that the present application is in condition for allowance. Favorable reconsideration, withdrawal of the rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3500. All correspondence should be directed to our address given below.

AUTHORIZATION

Applicants believe there is no other fees are due in connection with this filing. However, to the extent required, the Commissioner is hereby authorized to charge any additional fees due in connection with this filing to Deposit Account 50-1710 or credit any overpayment to same.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Serge Sira", with a horizontal line drawn underneath the signature.

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